

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Lifeline and Link Up Reform and)	WC Docket No. 11-42
Modernization)	
)	
Telecommunications Carriers Eligible for)	WC Docket No. 09-197
Universal Service Support)	
)	
Connect America Fund)	WC Docket No. 10-90
)	

**UNITED STATES TELECOM ASSOCIATION
PETITION FOR WAIVER**

Lifeline providers are working diligently to implement the comprehensive Lifeline reforms that the Commission recently adopted (Lifeline Order).¹ However, as noted in the United States Telecom Association (USTelecom) Petition for Reconsideration of the Lifeline order,² multiple stakeholders have legitimate concerns regarding the inconsistencies between federal and state eligibility criteria resulting from the Lifeline order. For this reason, USTelecom seeks a limited-time waiver of the revised rules 54.400(j) and 54.409(a), and applicable sections of the Lifeline order, to permit Lifeline providers to continue enrolling consumers in the federal Lifeline program based on state-specific program and income eligibility criteria in the states reflected in Attachment A to this document. Such waiver should expire at the earlier of 18

¹ Third Report and Order, Further Report and Order, and Order on Reconsideration, *Lifeline and Link Up Reform and Modernization*, FCC 16-38, 31 FCC Rcd. 3962, 81 FR 33025 (2016) (*Lifeline Order*).

² See, USTelecom Petition for Reconsideration and Clarification, WC Docket No. 11-42, WC Docket No. 09-197, WC Docket No. 10-90 (submitted June 23, 2016) (*USTelecom Petition*).

months from its grant or 60 days after the state notifies the Commission and all ETCs in the state that it has aligned its eligibility criteria with the federal criteria.

I. Introduction and Background

The Commission took a laudable step in streamlining the eligibility criteria for entry into the federal Lifeline program, and in preempting the states from layering on additional qualifying programs and/or income thresholds applicable to the federal program. This eventually will simplify administration of the federal Lifeline program, and allow providers, and ultimately the National Verifier, to operate more efficiently by evaluating a consistent set of criteria. However, as USTelecom noted in its Petition for Reconsideration, this streamlining does create complexities in the short term for those states and Lifeline providers that must continue to manage eligibility determinations until the National Verifier is implemented.

As a result of changes to the federal eligibility criteria, any state that has spelled out eligibility criteria for Lifeline in its statutes or regulations will be out of alignment with the new federal rules. Some state rules or laws allow subscribers to be eligible for both the federal and state Lifeline discounts under an expanded set of assistance programs or under income thresholds higher than 135% of the federal poverty guidelines. Even those states with criteria established in their rules that currently align with the federal program will be out of alignment upon the effective date of the new rules, because they include LIHEAP, TANF, and NSLP, and do not include Veterans and Survivors Pension Benefits.

Such a misalignment in eligibility criteria creates a significant implementation issue for providers and will lead to customer confusion in two categories of states³: 1) those with a state

³ States for which no waiver is requested include those that have never adopted specific eligibility criteria for Lifeline at the state level, as well as those with misaligned criteria that have no state-mandated Lifeline discount and no third party decision maker for eligibility. In the latter

Lifeline discount (either a monthly recurring discount or a one-time waiver of specific charges) and in which the provider makes eligibility determinations;⁴ and 2) those with a state discount and in which a third party, such as the utility commission or a third party administrator, makes the eligibility determination.⁵ Each category of states presents its own set of challenges.

In the first group of states, Lifeline providers today qualify consumers for Lifeline by checking relevant state databases⁶ and/or checking customer-provided documentation. Whereas in the past, all customers who qualified under any of the state-specified eligibility criteria could receive both the state and federal Lifeline discounts, differences between federal and state eligibility criteria could potentially require providers to manage three different sets of Lifeline subscribers: those eligible for both federal and state discounts, those eligible for only the federal discount (such as a subscriber relying on Veterans and Survivors Pension Benefit or purchasing stand-alone broadband), and those eligible for only the state discount (such as a subscriber relying on a state program or higher income threshold). Not only would this impact the provider's application forms and management process, but the potential for added customer

case, providers can rely on the Lifeline order's preemptive effect and simply apply the new streamlined criteria in that state.

⁴ Alaska, Connecticut, Illinois, Kansas, Kentucky, Maryland, Michigan, Minnesota, Missouri, New Mexico, New York, Ohio, Oklahoma, South Carolina, Wisconsin, and Puerto Rico.

⁵ California, Florida, Idaho, Nebraska, Nevada, Oregon, Texas, Utah, Vermont, West Virginia, and the District of Columbia.

⁶ Some of these databases include programs like TANF that will no longer qualify a consumer for the federal Lifeline program. To the extent such a database just returns a yes/no response with no indication of the basis for eligibility, a provider can no longer use that database to make eligibility decisions for the federal program. USTelecom is not seeking a waiver specifically in connection with such databases, however, since providers have the option to simply stop checking such databases which can no longer be considered appropriate, and to make determinations based solely on customer-provided documentation.

confusion, in an already confusing application process, is significant. The applications process with its many check boxes and requirements is already confusing enough. Confronting a customer with three different sets of eligibility options, each tied to a different level of benefit, or worse presenting three different application forms that differ in eligibility criteria and discount level, will greatly increase the likelihood of customer confusion. This will lead to increased customer dissatisfaction and contacts with providers, and potentially additional confusion as customers seek to switch the basis for their eligibility to maximize their benefits. In addition to trying to create and accommodate these varying applications and benefits, Lifeline providers will have to rework both back office and customer-facing processes, rate plans, IT systems, and financial reporting mechanisms. The opportunity for errors in FCC Form 497 and state level reporting also increases with the additional complexity of these differing levels of benefits.

Reworking all these processes is an unnecessary expense for what may only be a short time period before a state brings its program into alignment with the federal rules. By granting the requested waiver for a brief interim period, the Commission would avoid customer confusion and unnecessary expense for providers.

In the second group of states, providers are to a greater or lesser extent dependent upon a state commission, agency, or administrator that has taken responsibility for some or all eligibility determinations. In these states, providers are not made aware of the basis for the eligibility determination – which in the past was not a problem, because eligible customers were entitled to both state and federal discounts. Moving forward, however, if the state does not align its eligibility criteria with that of the federal program, a provider will not be able to rely on the administrator to determine whether a customer is eligible for the federal program. The provider must cease enrolling new federal Lifeline subscribers based on the administrator's information.

Consumers in those states likely would need to apply directly with the provider for federal discounts (although state law may prevent this, and in any event, providers are not currently set up to manage direct applications and eligibility determinations in these states) and with the state for state discounts. This creates confusion and increases the burden for every consumer and the providers in those states.

In a state like California, the eligibility determinations are made via an automated system, and changes will require IT work on the part of the state as well as the providers, whether the state ultimately aligns its eligibility criteria or not. Whether the state chooses to align its eligibility criteria or to inform providers of the specific basis for a positive eligibility decision, it will take both the state and the provider time to adjust to the new regime. And while each state only has to consider its own systems, providers who operate across multiple states need to manage all the disparate state systems without a crystal ball as to when and what changes any particular state might make.

Given all the difficulties that these inconsistencies will cause for consumers, Lifeline providers, and state administrative agencies, USTelecom respectfully seeks expeditious grant of the requested waiver. USTelecom has made every effort to identify each of the states where a waiver is necessary. However, due to the significant effort required to analyze all of the regulations and statutes within each state, combined with the impending December 1, 2016, deadline, USTelecom may amend this waiver request in order to add (or potentially delete) certain states from this request. USTelecom commits to submit any such amendment within fourteen calendar days of this filing.

II. Request for Waiver

Lifeline providers have no control over when states will bring their respective state programs into conformity with the eligibility criteria established by the Commission. As noted

in USTelecom's petition, absent the necessary changes, there will be significant administrative hurdles for providers and state administrators, as well as significant confusion for potential Lifeline customers.⁷

States that are involved in Lifeline eligibility determinations are facing understandable challenges in making the necessary changes to conform to the Commission's Lifeline reforms. In some instances, these changes may require revisions to the rules and regulations of a particular state – presumably within the purview of the respective public utility commission. In other instances, these changes may require updates to the governing statutes themselves, which would clearly be limited to the legislative bodies within each affected state. Further exacerbating these challenges is that in many instances, significant technological upgrades are necessary to state eligibility databases. USTelecom maintains that it will be challenging for impacted states to implement the necessary changes within the existing timeframes in order to avoid this problem.

Given the circumstances, USTelecom respectfully requests that the Commission grant a waiver of the changed eligibility requirements 54.400(j) and 54.409(a), and of those sections of the Lifeline Order that prohibit Lifeline providers from continuing to enroll consumers in the federal Lifeline program based on state-specific program and income eligibility criteria. This would allow Lifeline providers to continue to operate “business as usual” for a period of time, with the result that they would continue to enroll consumers in the federal Lifeline program on the basis of additional state-specified eligibility criteria.⁸ Specifically, the waiver would apply:

- 1) in states that offer a state discount and where there is an inconsistency between state and

⁷ See *USTelecom Petition*, pp. 7 – 9.

⁸ This means that providers and state administrators would not need to make Veterans and Survivors Pension Benefit available as an eligibility criterion during the waiver period, as that would also create a mismatch with the criteria for the state Lifeline programs.

federal eligibility criteria for the federal Lifeline program; and 2) where the state is unable to modify its statute(s) and/or regulation(s), and/or state administered databases and processes related to third party eligibility determinations, to be in alignment with the new federal criteria sufficiently in advance of the December 1, 2016 deadline so that providers are able to implement the changed requirements in a particular state.

The requested waiver would apply only in each affected state and only until that state has appropriately updated its statutory and/or regulatory Lifeline framework, as well as its eligibility databases and eligibility determinations processes, where applicable, and providers have had a reasonable period of time to implement those changes.⁹ In addition, customers enrolled under such state criteria should be permitted to remain in the program until their first recertification after the expiration of the waiver. At that point, they will have an opportunity to show if they qualify under the new federal eligibility criteria. This will make implementation of the waiver far more efficient and less confusing for consumers. Otherwise, affected existing customers would be subject to a disruptive and potentially confusing administrative ordeal.

Absent such a waiver, ETCs and state administrators in the affected states will face significant confusion and administrative overhead, which will undermine the administrative efficiencies intended by the Commission in its Lifeline Order. Confusion about the applicable eligibility rules has the potential to result in denial or, at a minimum, delay of Lifeline benefits to low-income subscribers, defeating the goal of the Lifeline program. Such an outcome is hardly

⁹ Additionally, even in a particular state, not all Lifeline providers may need or want to take advantage of the requested waivers. This petition seeks the requested waivers in order to permit, but not require, Lifeline providers to temporarily continue to use existing eligibility criteria for enrolling and recertifying Lifeline customers in the identified states.

desirable, but could be the result for many Lifeline-eligible customers unless the Commission grants the requested waiver.

III. Good Cause Exists to Grant the Requested Waiver.

The Commission may waive its rules for good cause shown.¹⁰ The Commission may exercise its discretion to waive a rule when the particular facts make strict compliance inconsistent with the public interest. In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. In short, a waiver is justified when special circumstances warrant a deviation from general rules and such deviation will serve the public interest.

Here, granting the requested waiver would serve the public interest, given the significant misalignment between the federal Lifeline eligibility requirements and those of a number of states. Such misalignment significantly complicates the application and intake process, eligibility determinations, recertifications, customer counts, rate plans (which now must proliferate – with potentially three sets of discounted rates for every one discounted rate previously provided) and every other aspect of managing the Lifeline program. As it is, the current deadline for implementation of the eligibility criteria as well as the Lifeline BIAS offering imposes severe time constraints on both state administrators and ETCs.

These complexities will attach not only to carriers, but to those state agencies and administrators who handle eligibility determinations and recertification of subscribers. While they are currently able to handle state and federal program eligibility and recertification in a consistent manner, such state agencies and administrators will now have to determine whether they will continue to manage both state and federal program issues when those are not consistent,

¹⁰ 47 C.F.R. § 1.3.

or whether they will cease to manage one or the other program and put the obligation on the provider to manage it. Depending on how long that decision-making takes, the providers may have little or no time to adapt to a new process.

The best result is that states align their Lifeline eligibility criteria with the federal criteria, and USTelecom is optimistic that states with their own Lifeline discounts will see the benefit of consistency in this area. Such consistency will allow both providers and relevant state agencies and administrators to continue to manage a single population of Lifeline subscribers. However, alignment of state and federal Lifeline programs will take some time. Some states will need time to open proceedings to amend their rules or, in some cases, to amend their statutes. It is unlikely that most or all affected states will be able to change their rules prior to the current effective date of the new federal rules.

Without a limited waiver from rules 54.400(j) and 54.409(a) and those sections of the Lifeline Order that prohibit Lifeline providers from continuing to enroll consumers in the federal Lifeline program based on state-specific program and income eligibility criteria, the incongruity between state and federal Lifeline requirements will create substantial administrative burdens for both Lifeline providers and state administrators, and create unnecessary additional burdens and confusion for consumers of the federal Lifeline program. In addition, substantial confusion will be injected into the Lifeline approval process, substantially increasing the potential for administrative mistakes and delays in providing Lifeline services to consumers. Absent a waiver, there is significant potential that many low-income consumers will not receive Lifeline benefits to which they otherwise are entitled.

USTelecom and its member companies appreciate the time and effort the Commission put forth to implement its most recent changes to the Lifeline program. At the same time,

however, the Commission's transformative changes to the Lifeline eligibility criteria require similar effort from Lifeline providers and many states.

Based on information compiled by USTelecom, it is estimated that approximately twenty seven states require updates to their respective regulations and/or statutes. Given the significant effort entailed for verifying Lifeline requirements in each state, USTelecom is continuing to review other states where statutory and/or regulatory misalignment may be present. Moreover, while in some states state commission staff have indicated in preliminary discussions that state eligibility criteria could be aligned with the new federal rules, further review may show that a waiver is in fact necessary. USTelecom may therefore amend this waiver as it continues its review of state requirements.

Of the states listed in attachment A, approximately fifteen require changes to their underlying regulations, three require changes to the statute, and six require changes to their regulations *and* statute. In instances where statutory changes are required, the situation is often made all the more challenging due to state legislative calendars. For example, in Florida (where changes are necessary in both the statute and underlying regulations), the legislative session does not commence until March, 2017. Similarly, in West Virginia (where a change to the statute is required), the legislative session does not commence until January, 2017.

Even when changes are necessary only at the regulatory level, these too can require significant time and resources, depending on states' procedural requirements for rulemaking proceedings. For example, while the Illinois Commerce Commission has proposed rule changes to address the differences between state and federal requirements, that proceeding remains pending. Similarly, in Nevada, a rulemaking proceeding is currently underway that is targeting a December 1, 2016 adoption date. The Nevada Commission is working diligently to modify its

rules before that date, but procedural requirements that apply to rulemaking proceedings make meeting that target date difficult. Similarly, the District of Columbia has initiated a rulemaking proceeding that is targeting December 1, 2016 to align its Lifeline eligibility criteria with the new federal requirements.

Further exacerbating this challenge is an additional layer of technological complexity in regards to the implementation of state administered eligibility processes. In the states where Lifeline providers rely on state eligibility determinations, most of those states do not provide ETCs with customer eligibility specifics. For example, the Texas Lifeline administrator has notified carriers that it plans to inform carriers whether a consumer qualifies for the federal Lifeline discounts, state Lifeline discounts, or both. As this is in the process of being implemented, carriers may not be able to operationalize the necessary changes to their systems and processes supporting the required file exchange by December 2, 2016.

This absence of functionality is extremely problematic, since, as currently designed, these processes cannot be used by Lifeline providers to accurately determine a potential Lifeline subscriber's eligibility and will potentially delay or deny federal Lifeline benefits to eligible subscribers. The denial or delay of Lifeline benefits – even for a short period of time – is a draconian result that the Commission should make every effort to avoid.

Moreover, the Commission previously granted a similar waiver request – thus ensuring continuity of benefits for consumers – when it last reformed its Lifeline program in 2012.¹¹ In that instance, the Commission granted a waiver request with respect to states in which a state Lifeline administrator or other state agency would be collecting subscriber certifications of

¹¹ Waiver Order, *Lifeline and Link Up Reform and Modernization*, 27 FCC Rcd 5941, DA 12-863 (released May 31, 2012).

eligibility, but had not yet modified their procedures in accordance with the Commission's 2012 Lifeline reform order to provide ETCs with subscriber certifications. There, as here, the Commission was addressing an environment where the federal obligations of the program were not in alignment with state capabilities. In granting the waiver request, the Commission concluded that a "temporary, narrowly tailored waiver from a portion of those rules is appropriate in this case to ensure that all eligible consumers are able to continue to receive benefits while ETCs remain compliant with our rules."¹² As in 2012, USTelecom is seeking only a temporary waiver (*i.e.*, until states can bring their legal frameworks and databases into compliance), and grant of the waiver will ensure that all eligible consumers are able to continue to receive Lifeline benefits to which they are entitled.

Accordingly, to protect low-income consumers and consistent with the public interest, good cause exists for the Commission to waive rules 54.400(j) and 54.409(a), and those sections of the Lifeline Order that prohibit Lifeline providers from continuing to enroll consumers in the federal Lifeline program based on state-specific program and income eligibility criteria in states reflected in Attachment A to this waiver. Such waiver should expire at the earlier of 18 months from its grant or 60 days after the state notifies the FCC and all ETCs in the state that it has aligned its eligibility criteria with the federal criteria.

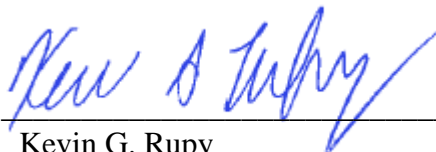
¹² *Id.*, ¶ 5.

IV. CONCLUSION

For the foregoing reasons, the Commission should grant USTelecom's Waiver Petition.

Respectfully submitted,

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Attachment A
States Requiring a Waiver

Alaska
California
Connecticut
District of Columbia
Florida
Idaho
Illinois
Kansas
Kentucky
Maryland
Michigan
Minnesota
Missouri
Nebraska
Nevada
New Mexico
New York
Ohio
Oklahoma
Oregon
Puerto Rico
South Carolina
Texas
Utah
Vermont
Wisconsin
West Virginia